

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Bernard, Director, Public Works/Capital Projects
954-797-1240

SUBJECT: Resolution

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM: A resolution of the Town of Davie, Florida, amending the Agreement between the Town of Davie and Robbins Lodge Preserve Caretaker and authorizing the Town Administrator to execute the Agreement.

REPORT IN BRIEF: Contract for Caretaker position at Robbins Lodge Preserve

PREVIOUS ACTIONS: Previously approved Resolution 2001-230, September 6, 2001

CONCURRENCES: Contract with previous caretaker reviewed and approved by Town Attorney's Office. No significant changes have been made to the contract.

FISCAL IMPACT:

Has request been budgeted? yes

If yes, expected cost: \$24,582

Account Name: Passive Park Salary Account

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Resolution

Caretaker Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND ROBBINS LODGE PRESERVE CARETAKER AND AUTHORIZING THE TOWN ADMINISTRATOR TO EXECUTE THE AGREEMENT.

WHEREAS, the Town of Davie is in need of maintenance and security for the Robbins Lodge Open Space Preserve; and,

WHEREAS, it is in the best interest of the Town to have on-site personnel monitoring park activities and providing on-going maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Town Council hereby authorizes the Town Administrator to enter into an agreement for caretaker services at the Robbins Lodge Preserve (Exhibit A & B attached).

SECTION 2. The Town Council hereby authorizes the expenditure from the Passive Parks Salary account.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004.

MAYOR/COUNCIL MEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

**AGREEMENT
between
TOWN OF DAVIE
and
Daniel Miller
for
CARETAKER AND SECURITY SERVICES AT ROBBINS PROPERTY**

This is an Agreement, made and entered into by and between: TOWN OF DAVIE, a political subdivision of the State of Florida, hereinafter referred to as "TOWN",
AND
Daniel Miller hereinafter referred to as "CARETAKER".

WHEREAS, TOWN and CARETAKER desire to enter into an agreement providing for CARETAKER to provide maintenance and security services at Robbins Property under the terms and conditions set forth herein; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, TOWN and CARETAKER agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 Board – Town Council
- 1.2 Contract Administrator – The Town of Davie Administrator, the Manager of Public Works/Capital Projects, or the designee of such Town Administrator or Manager. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CARETAKER and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator.
- 1.3 Town Attorney – The chief legal counsel for TOWN who directs and supervises the Office of the Town Attorney pursuant to Section 4.03 of the Town Charter.
- 1.4 Property – Robbins Property identified in this Agreement.
- 1.5 Services- Those services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 CARETAKER agrees to provide security services for the Property more specifically described in Exhibit "A", attached hereto and made a part hereof. CARETAKER shall make frequent, but not less than daily, inspections of the Property in accordance with the operating procedures established by the TOWN's Public Works/Capital Projects Manager or his designee. CARETAKER shall notify the Contract Administrator of any potentially hazardous conditions or any irregularity constituting a safety or security risk at the Property as soon as possible after discovery of same. The Contract Administrator shall make CARETAKER aware of critically sensitive areas of the Property as well as Property rules and regulations. CARETAKER's obligations and responsibilities are deemed to include all labor, materials, supplies and equipment necessary to perform said services.
- 2.2 CARETAKER shall notify the appropriate law enforcement agency immediately upon discovery of any evidence of vandalism, breaking and entering, unlawful entry, speeding, or other unlawful activity and, thereafter, shall notify the Contract Administrator of same. In the event that CARETAKER is also a law enforcement officer as defined in Section 943.10(1), Florida Statutes, such person is authorized and empowered to take such additional action within his/her lawful powers and, thereafter, CARETAKER shall notify the Contract Administrator of same.
- (a) If Caretaker is a sworn law enforcement officer, caretaker shall so inform the Chief of Davie Police Department immediately and shall coordinate any enforcement action with and through the Davie Police Department following procedures to be determined by the Davie Chief of Police.
- (b) Caretaker is not employed as a Law Enforcement Officer and as such it is anticipated that Caretaker would personally implement law enforcement actions only in exigent circumstances.
- 2.3 CARETAKER shall notify the Contract Administrator in advance of any time he/she will be absent from the Property which will prevent or interfere with his/her frequent inspections of the Property or the performance of any of his/her duties referenced herein.
- 2.4 CARETAKER shall perform maintenance tasks as outlined in scope of services attached.

ARTICLE 3

CARETAKER RESIDENCE

- 3.1 CARETAKER shall reside in housing at site on the Property designated by the Contract Administrator. All costs related to moving to the housing site shall be borne by CARETAKER.
- 3.2 CARETAKER residence described in Section 3.1 above, shall be located in the area described in Exhibit "A", attached hereto and made a part hereof. Such home and the area

surrounding same described in Exhibit "A" shall hereinafter be referred to as the "Premises".

- 3.3 CARETAKER shall fully and accurately complete the information contained in Exhibit "B", Personal Data Worksheet, attached hereto and made a part hereof.
- 3.4 TOWN shall provide for the installation, maintenance and repair of water, electrical and sewage service. TOWN shall not be liable for any damage or injury sustained by CARETAKER or any other person resulting from electrical breakdown, leakage or obstruction of water, sewer, or soil pipe or other leakage on or about the Premises or any other utility-related injury or damage.
- 3.5 CARETAKER shall pay the Town the sum of \$600.00 per month for rental fee of housing unit on site. Fee payable on first of each month.
- 3.6 All utilities for CARETAKER use shall be at TOWN's expense.

ARTICLE 4

USE OF PREMISES

- 4.1 CARETAKER agrees that the only use permitted for the Premises is as a personal residence for CARETAKER and his/her immediate family.
 - (a) Immediate family is defined as spouse and dependant children under the age of 21 years old.
- 4.2 CARETAKER shall make no unlawful, improper, immoral or offensive use of the Premises nor will CARETAKER use the Premises or allow the use of the Premises for any purpose other than that set forth in this Agreement. Failure of CARETAKER to comply with this provision shall be considered a material default under the Agreement enabling TOWN's Town Administrator to immediately terminate the Agreement with verbal notice to CARETAKER followed by formal written notice within twenty four (24) hours.
- 4.3 All personal property, equipment, fixtures, structures, or improvements permitted by TOWN to be constructed or placed on or about the Premises shall be at the risk of CARETAKER and TOWN shall not be liable for any damage or loss to CARETAKER's personal property, equipment, fixtures, structures, or improvements located thereon for any reason whatsoever. TOWN recommends that CARETAKER obtain and maintain a "Renters" insurance policy to provide coverage for CARETAKER's personal property.
- 4.4 CARETAKER agrees and understands that TOWN shall not have any liability with regard to CARETAKER's responsibilities under this Agreement or assets placed or located at the Premises.
- 4.5 In utilizing the Premises, CARETAKER agrees as follows:
 - (a) No laundry shall be visible on the Premises.

(b) Maintenance requiring disassembling of any vehicle or other motorized conveyances shall not be permitted on or about the premises.

(c) Radios, televisions, and other sources of noise shall be kept within the bounds of moderation at all times and in accordance with the Town's noise ordinance.

(d) No BB guns, firearms or other weapons shall be used, displayed or carried on the Premises or the Property. Except as proved for in Section 2.2 of the agreement, the possession or use of a firearm is strictly prohibited.

(e) No trash burning or other type of burning shall be permitted on the Premises except for outdoor cooking purposes on a grill.

(f) Caretaker shall obtain permission for the Town for each pet Caretaker desires to maintain on the premises. Caretaker may not maintain any pet on the premises without such prior written approval. Any pet permitted outside the residence must be secured by a leash or other means.

(g) No alcoholic beverages shall be consumed on the Property outside the CARETAKER's home.

(h) No excavation of soil in any manner shall be permitted.

(i) The entrance gate to the Premises shall be kept locked/closed at all times except when entering or exiting the Premises.

4.6 CARETAKER shall be responsible for maintaining the yard or cartilage thereof, as shown in Exhibit "A", attached hereto and made a part hereof. CARETAKER shall keep the exterior of the home and the outside areas surrounding the home free and clear of any obstruction, rubbish, or litter and maintain the exterior of the home and the outside area surrounding same in a neat, orderly, and attractive manner.

4.7 TOWN or its agents shall have the right to enter the Premises at any reasonable time for the purpose of inspecting the Premises or performing other duties as required by law or by the terms of the Agreement.

4.8 Security Deposit: Simultaneous with execution of the Agreement, CARETAKER shall pay TOWN through the Contract Administrator the amount of Five Hundred Dollars (\$500.00) as a security deposit. The payment shall be in the form of check or money order made payable to the Town of Davie. The purpose of the security deposit is to have monies available to compensate or assist in compensating TOWN for any damages done or expenses incurred by TOWN in the event that CARETAKER does not fully and faithfully perform his responsibilities under this Agreement. The security deposit shall be held by TOWN without interest payable to CARETAKER following termination or expiration of the Agreement. TOWN shall endeavor to return the security deposit to CARETAKER without interest within Thirty (30) days following termination or expiration, minus any amounts retained by TOWN to satisfy any referenced damages or expenses incurred by

TOWN. Acceptance of the security deposit by TOWN shall not constitute a limitation on, or waiver of any other claim by TOWN against CARETAKER arising out of this Agreement in excess of the security deposit amount.

ARTICLE 5

TERM

The term of this Agreement shall begin on the date it is approved by the Board and shall continue until terminated as provided for in Article 10 herein.

ARTICLE 6

CHANGES IN SCOPE OF SERVICES

Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 10.9 below.

ARTICLE 7

TERMINATION

- 7.1 This agreement may be terminated immediately for cause by action of the Board as defined in 1.1 or for convenience by either party upon not less than sixty (60) days' written notice by the Contract Administrator or CARETAKER. This Agreement may also be terminated by the Contract Administrator upon such notice as the Contract Administrator deems appropriate under the circumstances in the event the Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 7.2 If Caretaker fails to materially comply with any of the provisions of this Agreement, Town may, at its option, immediately terminate this Agreement and Caretaker and his family (if any), shall immediately surrender the premises. The failure to materially comply with the provisions of this Agreement shall be considered a basis for termination of the Agreement for cause. Termination of the Agreement for cause shall include, but not be limited to, failure of Caretaker to pay the rental required in Article 3.5, failure of Caretaker to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of Town as set forth in the Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the Contract Administrator which the Contract Administrator deems necessary to protect the public health, safety, or welfare

may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

- 7.4 In the event of termination by either party as provided for herein, CARETAKER shall surrender the Premises in good order and repair, reasonable use and ordinary wear and tear, damage by the elements and other casualty for which TOWN has been reimbursed by insurance excepted.

ARTICLE 8

IMPROVEMENTS

The plans and specifications for all permanent improvements, fence structures, landscaping and facilities made by CARETAKER on the Premises shall be submitted and approved by the Contract Administrator prior to the construction of installation of same. Any building or structure placed or constructed on the Premises and permanently attached thereto shall become the property of TOWN upon the termination of this Agreement. CARETAKER shall not remove any of said buildings or structures and shall execute any and all documents to effect transfer of title to said building or structures to TOWN.

ARTICLE 9

MISCELLANEOUS

9.1 TOWN EMPLOYEE

CARETAKER is a Town employee under this Agreement. Services provided by CARETAKER pursuant to this Agreement shall be subject to the supervision of Contract Administrator.

9.2 NOTICES

Whenever any party desires to give notice to the other, such notice must be in writing, send by certified United States mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. It is respectfully suggested that all notices be directed to the Town Administrator or the Manager of Public Works/Capital Projects Department, or such other designee as the Town Administrator deems appropriate. The title of such individual should be included along with the address of the Town of Davie. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner proved in this section. For the present, the parties designate the following:

FOR TOWN:

Town of Davie Town Administrator
6591 SW 45 Street

FOR CARETAKER:

Daniel Miller
PO Box 667672
Pompano Beach, FL 33066

10.1 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party and CARETAKER shall not subcontract any portion of the work required by the Agreement.

CARETAKER represents that he has the knowledge and skills, either by training, experience, education or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to TOWN's satisfaction.

CARETAKER shall perform duties, obligations, and services under this Agreement in a skillful and respectable manner.

10.2 CONFLICTS

CARETAKER shall not have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CARETAKER's loyal and conscientious exercise of judgment related to its performance under this Agreement.

10.3 MATERIALITY AND WAIVER OF BREACH

TOWN and CARETAKER agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of the Agreement and, therefore, is a material term hereof.

TOWN's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement.

10.4 COMPLIANCE WITH LAWS

CARETAKER shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

10.5 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CARETAKER elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

10.6 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of the Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

10.7 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of the Agreement, the term, statement, requirement, or provision contained in Article 1 through 12 of the Agreement shall prevail and given effect.

10.8 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of the Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. By entering into this Agreement, CARETAKER and TOWN hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of this Agreement.

10.9 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CARETAKER.

10.10 PRIOR AGREEMENTS

This document incorporated and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of the Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 10.9 above.

10.11 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" and "B" are incorporated into and made a part of the Agreement.

10.12 MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

EXHIBIT B

CARETAKERS NAME: Daniel Miller

ADDRESS: PO Box 667672
Pompano Beach, Florida 33066

TELEPHONE: (954) 683-5294

EMERGENCY CONTACT PERSON AND PHONE NUMBER:

Cyndi Hoxie (Daughter) (352) 669-6616

NAME OF SPOUSE: N/A

NAME(S) OF CHILDREN: N/A

PET(S): N/A

SCOPE OF SERVICES

1. Daily Duties

- a. Open restroom facilities in tree hammock area.
- b. Clean restroom facilities.
- c. Monitoring of public activities within park and notification to Town of Davie Police or Public Works Department of any occurrences above proposed usage.
- d. Daily site inspections throughout the site for removal of trash and proper disposal of same.
- e. Set up and cleaning of Robbins Lodge facilities, Equestrian Center and picnic pavilion before and after scheduled activity.

2. Weekly Duties

- a. Clean recreational trail within park property.
- b. Inspect equestrian trail for safe usage.
- c. Weed eating of grass and weeds, chain sawing tree limbs, removal of fallen branches to area designated for proper disposal.
- d. Chemical treatment of weeds and exotic plants.
- e. Maintain equestrian troughs throughout park.
- f. Check playground, picnic tables and grills throughout park for safety and proper operating condition. Perform preventive maintenance as needed.

3. Monthly Duties

- a. Landscaping, planting shrubs, pruning same and fertilizing same.
- b. Monitoring contractual vendor maintaining pastures and grounds.
- c. Removal of invasive plant species from hammock areas.
- d. Building maintenance (painting, pressure cleaning, A/C filters and minor repair).
- e. Fence repair throughout park on an as needed basis.

4. Park Projects

- a. Paint white fence throughout park.
- b. Maintain park signage including tree identification signs.
- c. Maintain parking area and pavement striping.
- d. Elevation of trees throughout park property and trail on Faulk parcel west of park.
- e. Any other projects assigned to park.

ALL MAINTENANCE MATERIAL AND EQUIPMENT WILL BE SUPPLIED BY PUBLIC WORKS DEPARTMENT.

CARETAKER (Daniel Miller)

MAYOR/COUNCIL MEMBER

ATTEST:

TOWN CLERK